IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 154 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMLESH DEV KRUSHAN JAGARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 154 of 1989
   MR YS MANKAD for Petitioner No. 1
   MR MA BUKHARI, AGP for Respondent No. 1
   RULE SERVED for Respondent No. 2-4

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 14/02/2003

ORAL JUDGEMENT

The present petition is filed against the respondent No.2 seeking prayer for reoccupation of the suit land and also for suitable compensation for illegally removing the petitioner from the said land.

2) The petitioner has submitted that he was

occupying the said land for last more than seventeen years and he was carrying out his business on the handcart (lari) of sugarcane juice and colddrinks. He was granted necessary permission by the respondent-Nagarpalika. Necessary permits, licenses etc. are annexed along with the petition. An additional affidavit was also filed on 7-2-2003 in support of the present petition. It was stated in the said affidavit that during the pendency of the present petition before this Court certain developments have taken place. It was also stated that the petitioner's handcart (lari) is not creating any obstacle or hindrance to the public on road and that Bhuj Nagarpalika as well as Police authorities have not taken any objection to the continuance of the suit Lari. In support of these averments, he has submitted various documents including permit issued by respondent-Nagarpalika on 1-4-2002 granting permission to occupy the said land till 31st March, 2003. The petitioner has also paid the fees of Rs.600 to renew the license upto 31st March, 2003. Considering all these evidences and affidavit, it is submitted that the petitioner is not an encroacher but is occupying the suit land under the permit of the respondent-Nagarpalika.

3) Mr.Y.S.Mankad, learned advocate for the petitioner submits that in view of the various documentary evidence and in view of the long holding and occupying of the place for number of years under the permit issued by the respondent-Nagarpalika, the petitioner should not be removed without following due process of law.

4) Mr.M.A.Bukhari, learned AGP appearing for the respondent No.1 has submitted that the petitioner is not entitled to occupy the said lands, as admittedly it is a public land, and it creates hindrances and obstacles in the way of the public at large. Though the respondent No.4 is served, nobody has filed appearance on behalf of the said Nagarpalika.

5) After having heard the learned advocate appearing for the respective parties and after having considered the averments and pleadings narrated in the petition as well as in the additional affidavit in support of the petition, as well as after having perused the documents attached with the petition and additional affidavit, I am of the view that the petitioner cannot be termed as an encroacher, as he is occupying the land under the valid and lawful permit of the respondent-Nagarpalika. The petitioner, therefore, cannot be removed without following due process of law as the respondent has issued

the permit which is effective till 31st March, 2003. Hence, there is no question of removing him from the land in question. It is, therefore, directed to the respondent authorities not to evict the petitioner from the place in question without following due process of law.

The petition is, therefore, disposed of with the aforesaid directions. Rule is made absolute to the above extent with no order as to costs.

In view of the order passed in the main petition, the Civil Application does not survive and hence it is disposed of accordingly.

(K.A.Puj, J.)

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